

1 AN ACT
2 RELATING TO CHILDREN; AMENDING THE DEFINITION OF "CAREGIVER"
3 IN THE KINSHIP GUARDIANSHIP ACT; AMENDING SECTIONS OF THE
4 KINSHIP GUARDIANSHIP ACT.
5

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

7 Section 1. Section 40-10B-2 NMSA 1978 (being Laws
8 2001, Chapter 167, Section 2) is amended to read:

9 "40-10B-2. POLICY--PURPOSE. --

10 A. It is the policy of the state that the
11 interests of children are best served when they are raised
12 by their parents. When neither parent is able or willing to
13 provide appropriate care, guidance and supervision to a
14 child, it is the policy of the state that, whenever
15 possible, a child should be raised by family members, or
16 caregivers.

17 B. The Kinship Guardianship Act is intended to
18 address those cases where a parent has left a child or
19 children in the care of another for ninety consecutive days
20 and that arrangement leaves the child or children without
21 appropriate care, guidance or supervision.

22 C. The purposes of the Kinship Guardianship Act
23 are to:

24 (1) establish procedures to effect a legal
25 relationship between a child and a kinship caregiver or

1 other caregiver when the child is not residing with either
2 parent; and

3 (2) provide a child or a sibling group with
4 a stable and consistent relationship with a kinship
5 caregiver or other caregiver that will enable the children
6 to develop physically, mentally and emotionally to the
7 maximum extent possible when the children's parents are not
8 willing or able to do so."

9 Section 2. Section 40-10B-3 NMSA 1978 (being Laws
10 2001, Chapter 167, Section 3) is amended to read:

11 "40-10B-3. DEFINITIONS. --As used in the Kinship
12 Guardianship Act:

13 A. "caregiver" means:

14 (1) an adult, who is not a parent of a
15 child, with whom a child resides and who provides that child
16 with the care, maintenance and supervision consistent with
17 the duties and responsibilities of a parent of the child; or

18 (2) a nonprofit organization that:

19 (a) receives no public funding;

20 (b) acts as a temporary or permanent
21 guardian of children voluntarily placed in its care pursuant
22 to a caregiver's power of attorney;

23 (c) is dedicated to maintaining
24 sibling groups intact in a residential setting; and

25 (d) provides the children placed with

1 it the care, maintenance and supervision consistent with the
2 duties and responsibilities of a parent of the children;

3 B. "child" means an individual who is a minor;

4 C. "kinship" means the relationship that exists
5 between a child and a relative of the child, a godparent, a
6 member of the child's tribe or clan or an adult with whom
7 the child has a significant bond;

8 D. "parent" means a biological or adoptive
9 parent of a child whose parental rights have not been
10 terminated; and

11 E. "relative" means an individual related to a
12 child as a spouse, parent, stepparent, brother, sister,
13 stepbrother, stepsister, half-brother, half-sister, uncle,
14 aunt, niece, nephew, first cousin or any person denoted by
15 the prefix "grand" or "great", or the spouse or former
16 spouse of the persons specified."

17 Section 3. Section 40-10B-9 NMSA 1978 (being Laws 2001,
18 Chapter 167, Section 9) is amended to read:

19 "40-10B-9. GUARDIAN AD LITEM - APPOINTMENT. --

20 A. In a proceeding to appoint a guardian
21 pursuant to the Kinship Guardianship Act, the court may
22 appoint a guardian ad litem for the child upon the motion of
23 a party or solely in the court's discretion. The court
24 shall appoint a guardian ad litem if a parent of the child
25 is participating in the proceeding and objects to the

1 appointment requested.

2 B. In a proceeding in which a parent of the
3 child has petitioned for the revocation of a guardianship
4 established pursuant to the Kinship Guardianship Act and the
5 guardian objects to the revocation, the court shall appoint
6 a guardian ad litem.

7 C. The court may order all or some of the
8 parties to a proceeding to pay a reasonable fee of a
9 guardian ad litem. If all of the parties are indigent, the
10 court may award a reasonable fee to the guardian ad litem to
11 be paid out of funds of the court.

12 D. The court shall appoint a guardian ad litem
13 in all cases involving a nonprofit organization caregiver."

14 Section 4. Section 40-10B-14 NMSA 1978 (being Laws
15 2001, Chapter 167, Section 14) is amended to read:

16 "40-10B-14. CONTINUING JURISDICTION OF THE COURT.--

17 A. The court appointing a guardian pursuant to
18 the Kinship Guardianship Act retains continuing jurisdiction
19 of the matter.

20 B. In a case involving a child less than
21 fourteen years of age placed with a nonprofit caregiver, the
22 court shall review the placement of the child every six
23 months. In a case involving a child fourteen years of age
24 or older placed with a nonprofit caregiver, the court shall
25 conduct an annual review of the placement of the child. The

